

**AGREEMENT
BETWEEN
MARYLAND CLEAN ENERGY CENTER
AND**

THIS AGREEMENT (this "Agreement"), is made as of the ____ day of _____, 201_, between the **MARYLAND CLEAN ENERGY CENTER** ("MCEC"), a body politic and corporate and a public instrumentality of the State of Maryland, whose address 212 West Street, Suite 200, Annapolis, MD 21401, and _____ ("Contractor"), whose address is _____ and whose FEIN is _____.

MCEC and Contractor do mutually agree as follows:

1. Services to be Provided.

(a) MCEC shall purchase Contractor's services, and Contractor shall _____, in accordance with Contractor's Proposal dated _____, _____) (the "Proposal"), attached as Exhibit A and incorporated herein, to the extent that the Proposal is consistent with this Agreement.

(b) MCEC retains the unilateral right to require changes in the services to be rendered, so long as the changes are within the general scope of work to be performed hereunder.

2. Term of Agreement. Performance under this Agreement commences on _____, 20__, and continues until agreed upon services are completed, but in any case no later than _____, 20__.

3. Compensation and Method of Payment.

(a) Compensation. MCEC shall compensate Contractor for services satisfactorily performed at the rates set forth in Exhibit A. The total cost to MCEC for the services to be provided by Contractor under this Agreement may not exceed _____ Dollars (\$_____).

(b) Method of Payment. MCEC shall pay Contractor no later than thirty days after MCEC receives a proper invoice from Contractor, which invoices shall be tendered at monthly intervals. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, State Finance and Procurement Article, Maryland Code, are prohibited.

4. Responsibility of Contractor. Contractor shall perform the services with that standard of care, skill, and diligence normally provided in the performance of similar services.

5. Disputes. This Agreement shall be deemed subject to Title 15, Subtitle 2 (Dispute Resolution), State Finance and Procurement Article, Maryland Code and to COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, Contractor must proceed diligently with the performance of the Agreement in accordance with MCEC's decision. Unless a lesser period is provided by law, Contractor must file a written notice of claim with MCEC within thirty days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with

or within thirty days of the filing of a notice of claim, but no later than the date of final payment under the Agreement, Contractor must submit to MCEC its written claim containing the information specified in COMAR 21.10.04.02.

6. Termination for Convenience. MCEC may terminate the performance of work under this Agreement in whole, or, from time to time, in part, whenever MCEC determines that such termination is in the best interest of MCEC. MCEC shall pay all reasonable costs for work performed by Contractor under the terms of this Agreement, but shall not be liable for any costs incurred to undertake this Agreement or not amortized in the price of the Agreement. MCEC may not reimburse Contractor for any anticipatory profits that have not been earned up to the date of termination.

7. Termination for Default. If Contractor fails to fulfill its obligations under this Agreement properly and on time, or otherwise violates any provision of the Agreement, MCEC may terminate the Agreement by written notice to Contractor. The notice must specify the acts or omissions relied on as cause for termination. All finished or unfinished supplies and services provided by Contractor shall, at MCEC's option, become MCEC's property.

8. Set-Off, Etc. MCEC may deduct from and set off against any amounts due and payable to Contractor any back-charges, penalties, or damages sustained by MCEC, by virtue of any breach of this Agreement by Contractor. Nothing herein shall be construed to relieve Contractor of any liability for additional costs resulting from a failure to satisfactorily perform the services. Upon receipt and acceptance of the final payment due under this Agreement in accordance with its original terms or with an early termination by MCEC, the Contractor waives any and all rights or claims arising under this Agreement, unless otherwise agreed in writing by MCEC.

9. Contingent Upon Funds. If MCEC does not have funds available for continued performance for any period of this Agreement, this Agreement must be canceled automatically as of the beginning of the period for which funds were not available. Cancellation does not affect either MCEC's rights or Contractor's rights under any termination clause in this Agreement. The effect of cancellation of the Agreement hereunder will be to discharge both Contractor and MCEC from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. MCEC shall pay all reasonable costs for work performed by Contractor under the terms of this Agreement, but shall not be liable for any costs incurred to undertake this Agreement or not amortized in the price of the Agreement. MCEC shall notify Contractor as soon as it has knowledge that funds may not be available for the continuation of this Agreement.

10. Dissemination of Information. Contractor shall not release any information related to the services or performance of the services under this Agreement, nor publish any final reports or documents, without the prior written approval of MCEC, or unless such release is otherwise required by law or reasonably necessary to be disclosed in judicial proceedings. Contractor shall treat all information obtained by, or on behalf of, MCEC in connection with services performed under this Agreement as confidential and shall not disclose such information except as required by law.

11. Ownership of Documents, Equipment, and Materials. (a) *Ownership.* Contractor agrees and shall ensure that all documents, equipment, and materials including but not limited to reports, drawings, studies, specifications, estimates, maps, software, photographs, designs, graphics, mechanicals, artwork, and computations prepared by or for, or purchased by or for, Contractor in connection with the performance of this Agreement shall at any time during the term of this Agreement be available to MCEC and shall become and remain the exclusive property of MCEC upon termination or completion of the services. MCEC shall have the right to use same without restriction and without compensation to Contractor or others other than that provided in this Agreement. MCEC shall be the owner for purposes

of copyright, patent or trademark registration, and Contractor hereby transfers to MCEC any rights it may have in the work produced pursuant to this Agreement. Contractor agrees that at all times during the term of this Agreement and thereafter, the works created and services performed shall be “works made for hire” as that term is interpreted under copyright law. To the extent that any products created under this Agreement are not MCEC works for hire, Contractor hereby transfers and assigns to MCEC all of its rights, title and interest (including all intellectual property rights) to all such products created under this Agreement, and will cooperate reasonably with MCEC in effectuating and registering any necessary assignments. (b) Third party; Indemnification. If Contractor obtains or uses for purposes of this Agreement any design, device, material, process, or work covered by patent, copyright, or trademark, Contractor shall ensure MCEC that it is licensed to possess and to use such design, device, material, process, or work. Contractor shall indemnify MCEC, its officials, agents and employees with respect to any claim, action, cost or judgment for patent, trademark or copyright infringement by Contractor arising out of the possession or use of any design, device, material, process, supplies, equipment, services or other work covered by this Agreement.

12. Retention of Records. Contractor shall retain and maintain all records and documents relating to this Agreement for three years after final payment by MCEC hereunder or any applicable statute of limitations, whichever is longer. Contractor shall make such records and documents available for inspection and audit by authorized representatives of MCEC, at all reasonable times.

13. Responsibility for Claims and Liability. MCEC is not liable in any action of tort, contract, or otherwise for any actions of Contractor arising out of this Agreement. Contractor shall be responsible for all damage to life and property due to its activities or those of its agents or employees. Contractor shall indemnify and absolve MCEC, the State, their officials, agents, and employees from and against all claims, suits, judgments, expenses, actions, damages and costs of every name and description, including reasonable attorney's fees, arising out of or resulting from the goods provided or Contractor's performance of services under this Agreement.

14. Compliance with Laws. Contractor shall comply with all laws, regulations, and court and administrative orders.

15. Representations and Warranties. Contractor hereby represents and warrants that:

(a) It is qualified to do business in the State of Maryland and that it will take such action as, from time to time, may be necessary to remain so qualified;

(b) It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Agreement;

(c) It shall comply with all federal, State, and local laws applicable to its activities and obligations under this Agreement; and

(d) It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.

16. Non-Discrimination in Employment. Contractor shall operate under this Agreement so that no person, otherwise qualified, is denied employment or other benefits on the basis of: (a) race, color, creed, national origin, or marital status; (b) sex or age, except when sex or age constitutes a bona fide occupational qualification; or (c) the physical or mental disability of a qualified individual with a disability. Except in subcontracts for standard commercial supplies or raw materials, Contractor shall

include a clause similar to this clause in all subcontracts. Contractor shall provide actual notice of the foregoing to employees and applicants for employment.

17. Subcontracting; Assignment. Contractor may not, during the term of this Agreement or any renewals or extensions of the Agreement, assign any of its rights hereunder nor delegate or subcontract all or any part of its duties hereunder without the prior written approval of MCEC. Any approved subcontract or assignment is subject to all terms and conditions that MCEC deems necessary. MCEC is not responsible for Contractor's obligations to its subcontractors.

18. Insurance: Contractor shall maintain at all times during the performance of this Agreement, a commercial general liability insurance policy with a minimum occurrence coverage in the amount of \$1,000,000; an automobile liability insurance policy in the minimum amount of \$500,000, and workers' compensation insurance for employees in the State. All insurance policies shall:

(a) Provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said policies except upon thirty (30) days written notice to MCEC;

(b) Be evidenced by the original Certificate of Insurance, specifying the required coverage and the insurance carrier's standard additional insured form endorsement, which shall be updated as necessary; and

(c) Be approved as to form and sufficiency by the MCEC.

If the commercial general liability insurance referred to above is written on a Claims Made Form then, following termination of this Agreement, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this Agreement.

19. Agreement Modification. Except as provided in section 1(b) above, this Agreement may be amended only as MCEC and Contractor mutually agree in writing. Except for the specific provision of the Agreement which is amended, the Agreement remains in full force and effect after such amendment and is subject to the same laws, obligations, conditions, provisions, rules, and regulations, as it was before the amendment.

20. Maryland Law. This Agreement shall be construed, interpreted, and enforced according to the laws of the State of Maryland. Any claim brought in connection with this Agreement must be brought in the State Courts of Maryland and the parties consent to the jurisdiction of the State Courts of Maryland.

21. Entire Agreement. This Agreement, together with any Exhibits incorporated by reference, represents the complete and final understanding of the parties. No other understanding or representations, oral or written, regarding the subject matter of this Agreement, may be deemed to exist or to bind the parties at the time of execution.

IN WITNESS WHEREOF, the parties have executed this Agreement on or before the date first set forth herein.

WITNESS/ATTEST:

CONTRACTOR:

By: _____
Name: _____
Title: _____

WITNESS:

MARYLAND CLEAN ENERGY CENTER:

By: _____
Name: I. Katherine Magruder
Title: Executive Director

Attachment: Exhibit A: Contractor's Proposal